FISCAL NOTE

Bill #:	HB0030	**Title:**	Transfer work comp surplus funds to general fund for certain purposes
Primary Sponsor:	Christopher Harris	**Status:**	As Introduced

Sponsor signature Date

Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2003 Difference	**FY 2004 Difference**	**FY 2005 Difference**
Expenditures:			
Other - Enterprise	$8,403,348	$4,775,401	$3,462,002
Revenue:			
General Fund	$1,000,000	$0	$0
State Special Revenue	$7,403,348	$4,775,401	$3,462,002

Net Impact on General Fund Balance: Increases General Fund balance in FY03.

Yes	No		Yes	No	
	X	Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. The FY 2003 transfer of the FY 2002 Old Fund excess of 'adequate funding' is estimated to be $8,403,348.

2. The FY 2004 transfer of the FY 2003 Old Fund excess of 'adequate funding' is estimated to be $4,775,401.
3. The FY05 transfer of the FY04 Old Fund excess of 'adequate funding' is estimated to be $3,462,002.
4. In FY 1988 a tax on Montana employers was imposed to fund the unfunded workers' compensation liability. This tax was expanded in 1993 to include employees and self-employed and became known as the Old Fund Liability Tax (OFLT).
5. The OFLT was terminated effective December 31, 1998, upon determination that the liabilities of the Old Fund were 'adequately funded'. Adequately funded is defined in 39-71-2352(4), MCA, as the present value of: the total cost of future benefits remaining to be paid; the cost of administering claims; and an additional amount equal to 10% of the total amounts of benefits remaining and administrative cost.
6. Should it be determined that the Old Fund is not 'adequately funded,' current law 39-71-2352, MCA, requires the State Fund to transfer back an amount to the Old Fund to maintain 'adequate funds'. This amount is limited to the total transfers from the Old Fund to the State Fund (New Fund).
7. Annually, an independent actuary is engaged to determine if the Old Fund continues to be 'adequately funded'. Funds in excess of 'adequate' are transferred to the State Fund (New Fund). In FY 2001 and FY 2002, the transfers were $6,765,027 and $7,407,512, respectively.
8. HB30 would transfer the excess of 'adequate funding' to the general fund rather than the State Fund.
9. As required by law, the State Fund contributed approximately $166 million toward the Old Fund's unfunded liability, in lieu of dividends, to eliminate the OFLT many years earlier then anticipated. This equates to 30% of the total Old Fund liability funding since 1987.
10. The Legislature recognized the contributions made by the Montana State Fund and the businesses insured by MSF in SB 67 passed in 1997. Any funds in excess of the present value of: the total cost of future benefits remaining to be paid; the cost of administering claims; and an additional amount equal to 10% of the total amounts of benefits remaining and administrative cost, is to be returned to MSF each year, which creates an 'ownership' interest by State Fund policyholders in any excess funds. SB 19 takes funds in excess of 'adequate funding' without recognition of this interest.
11. HB-30 requires the State Fund to transfer funds to the Old Fund if the Old Fund is not 'adequately funded'.
12. Under existing law, all property and securities acquired through the use of money belonging to the State Fund (New Fund), and interest and dividends are the sole property of the State Fund (New Fund) and must be used exclusively for the operations and obligations of the State Fund (New Fund). The money collected by the state fund may not be used for any other purpose (MCA § 39-71-2320). The money coming into the state fund must be held in trust for the purpose for which the money was collected (MCA § 39-71-2322). Attempts to divert the assets of the State Fund (New Fund) to the Old Fund, in the event the Old Fund becomes less than adequately funded, may amount to an unconstitutional impairment of the State Fund's policyholders' contracts with the State Fund, or an unlawful use of funds held in trust for State Fund (New Fund) purposes. *See Eckles v. State of Oregon*, 306 Ore. 380, 760 P. 2d 846 (1988); *Gronning v. Smart*, 561 P.2d 690 (Utah 1977); *Moran v. Oklahoma*, 534 P.2d 1282 (Ok. 1975).
13. HB30 transfers fund balances. There is no new revenue generated.

FISCAL IMPACT:

	FY 2003 Difference	FY 2004 Difference	FY 2005 Difference
Expenditures:			
Transfers	$8,403,348	$4,775,401	$3,462,002
Funding:			
Enterprise (06)	($8,403,348)	($4,775,401)	($3,462,002)
Revenues:			
General Fund (01)	$1,000,000	$0	$0
State Special Revenue (02)	$7,403,348	$4,775,401	$3,462,002
Net Impact to Fund Balance (Revenue minus Expenditure):			
General Fund (01)	$1,000,000	$0	$0
State Special Revenue (02)	$7,403,348	$4,775,401	$3,462,002
Other – Enterprise (06)	($8,403,348)	($4,775,401)	($3,462,002)

TECHNICAL NOTES:

1. In section 1, 39-71-2352(5), the bill should be amended to strike 'to pay for claims for injuries resulting from accidents that occurred on or after July 1, 1990.' This language is part of the description of the account established which has been struck in this bill. The bill should say "on or before July 1, 1990."
2. The worker's compensation old fund balance could be interpreted as a rebate of premiums. When the premiums were paid, the federal government participated in the premium costs. There is a contingent liability if the federal government were to interpret this is a premium rebate. If this were to occur, the federal government would want their share of the premiums returned.